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SUBJECT: REPLACEMENT CABLE: SPECIAL 301 REVIEW: KEEP GOU ON
WATCH LIST

REF: STATE 7944

SENSITIVE BUT UNCLASSIFIED--PLEASE PROTECT ACCORDINGLY.

11. This is the replacement cable for Tashkent 292.

12. (SBU) Summary: Post has seen legislative, but not enforcement, progress on Uzbekistan's Intellectual Property Rights (IPR) regime in 2006. The government adopted the "Law on Copyright and Related Rights" in July, which adheres to international conventions and the World Trade Organization (WTO) Trade Related Aspects of Intellectual Property Rights (TRIPS) agreement. Uzbekistan adhered to the Berne Convention in 2005, but still holds a reservation to its accession regarding Article 18. Post agrees with the International Intellectual Property Alliance's (IIPA) criticisms of the GOU's lack of enforcement of the IPR regime and agrees that Uzbekistan should stay on the Special 301 watch list. However, Post does not believe that revoking General System of Preferences (GSP) privileges will lead to further progress. End summary.

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13. (SBU) The GOU finally adopted The "Law on Copyright and Related Rights," which took effect in July, 2006. Developed in accordance with WTO requirements and standards, the law gives comprehensive definitions of terms, in addition to addressing collective rights management and compulsory licensing. The new version of the copyright law provides for extended rights in accordance with the Berne and Rome Conventions to the producers of phonograms, foreign and Uzbek authors, performers and subjects of related rights. In 2005, Uzbekistan agreed to the Berne Convention, but made a reservation to its accession regarding Article 18. This reservation continues. (Note: Article 18 protects pre existing works from the U.S. and all other Berne countries. End note.)

14. (SBU) The most vague and problematic aspect of the new law is its planned implementation. The GOU still must make numerous amendments to legal documents and delegate enforcement to a government agency. The enactment of the law is a positive development, as it creates a legal basis for intellectual property rights. It remains to be seen, however, how the law will be implemented.

CRIMINAL AND CUSTOMS CODE CHANGES: "WE'RE WORKING ON IT"

15. (SBU) Amendments to the Criminal Code affecting IPR were proposed in 2004, but the Parliament has not officially reviewed the draft law on changes to the legislation on IPR enforcement.

16. (SBU) The draft Customs Code still has not been submitted to the WTO and it appears the Uzbeks are marking time. In both 2005 and 2006, the GOU said the new edition of the Customs Code would be adopted in 2006 and 2007 respectively.

ENFORCEMENT: NOT GOOD ENOUGH

17. (SBU) Uzbekistan is a poor country and despite GDP growth officially reported around seven percent in 2006, poverty figures have not improved, meaning that fewer people can afford basic goods, let alone pirated goods. The GOU, in order to restrict illicit trade and increase tax collection, conducted a few raids in 2006 on retailers of optical disks (music and computer CDs and DVDs) and videotapes. The Uzbek Copyright Agency, in association with Microsoft's office in Tashkent and the United Nations Development Program, held two seminars for law enforcement agencies to discuss intellectual property rights. Despite these actions, pirated music CDs, cassettes, movies and computer software are still readily available, at least in the capital, for approximately \$3.20-5.60 (4,000-7,000 soum). The majority of the black market goods come from Ukraine and Russia, although an increasing number of CDs come from Kazakhstan.

RESPONSE TO IIPA and IFPI: A REPEATING RECORD OF DELAYS

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18. (SBU) Post agrees with IIPA's findings of problems in Uzbekistan's enforcement to protect intellectual property rights. A prerequisite for fixing these problems is engagement with the GOU. The U.S.-Uzbekistan bilateral relationship deteriorated significantly following the May 2005 events in Andijon. Subsequently, the GOU has stopped cooperation in many areas and is currently unwilling to fruitfully engage with Post on IPR and WTO accession issues.

19. (SBU) Uzbekistan's problem with copyright piracy is with the sale of pirated goods; not with production. Post strongly disagrees with the International Federation of the Phonographic Industry's (IFPI) estimate of losses due to music piracy of USD 30 million. This does not take into account the fact that very few Uzbeks, earning an average of USD 50/month, could or would actually purchase a legal copy of a CD. It is very possible that the U.S. music, video and computer software industry suffers limited loss from sales of pirated music, videos and computer programs in Uzbekistan, as per capita income is too low to support purchases of legal IPR products.

KEEP GOU ON WATCH LIST; MAINTAIN GSP PRIVILEGES

110. (SBU) There is no denying that the GOU has a long way to go to be in compliance with all WTO TRIPS requirements. However, the WTO advisor program has made effective progress in stimulating change within the GOU IPR regime. We should allow time to review the impact of the new legislation before imposing further penalties on Uzbekistan for lack of IPR protection.

111. (SBU) Although we agree with IIPA that the GOU should remain on the Special 301 Watch List, Post believes that eliminating Uzbekistan's GSP privileges, as recommended by IIPA, would be counterproductive at this time. Rather than taking this step, Post believes we need to continue to engage the GOU through the WTO process.

PURNELL